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RIGHT OF PEOPLES TO SELF-DETERMINATION

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 5	2
II.	SUMMARY OF ACTION TAKEN BY THE COMMISSION ON HUMAN RIGHTS AT ITS FORTY-NINTH SESSION AND BY THE ECONOMIC AND SOCIAL COUNCIL AT ITS SUBSTANTIVE SESSION OF 1993	6 - 7	3
III.	REPLIES RECEIVED FROM GOVERNMENTS		3
	Cuba		3
	Ecuador		6
	Jordan		8
	Spain		9
	Yugoslavia		10

* A/48/150 and Corr.1.

I. INTRODUCTION

1. In its resolution 47/82 of 16 December 1992, the General Assembly, inter alia, called upon all States to implement fully and faithfully all the relevant resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination; reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation, in all its forms and by all available means; reaffirmed that the practice of using mercenaries against sovereign States and national liberation movements constituted a criminal act, and called upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territories and the transit of mercenaries through their territories to be punishable offences and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General; expressed its appreciation for the material and other forms of assistance that peoples under colonial rule continued to receive from Governments, organizations of the United Nations system and other intergovernmental organizations, and called for a substantial increase in that assistance; and decided to consider the question at its forty-eighth session under the item entitled "Right of peoples to self-determination".

2. In its resolution 47/83 of 16 December 1992, the General Assembly, inter alia, reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights; requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation; and requested the Secretary-General to report on that issue to the Assembly at its forty-eighth session under the item entitled "Right of peoples to self-determination".

3. In its resolution 47/84, also of 16 December 1992, the General Assembly, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation.

4. Accordingly, the Secretary-General, in a note verbale dated 30 April 1993, invited all States to communicate to him any relevant information they might wish to submit for inclusion in the report he was requested to prepare pursuant to paragraph 6 of Assembly resolution 47/83 and paragraph 26 of resolution 47/82.

5. The present report contains a summary of action taken by the Commission on Human Rights at its forty-ninth session and by the Economic and Social Council at its substantive session of 1993 and replies received from Governments as at 1 September 1993. Any additional replies will be reproduced in an addendum to the present document.

I. SUMMARY OF ACTION TAKEN BY THE COMMISSION ON HUMAN RIGHTS AT ITS FORTY-NINTH SESSION AND BY THE ECONOMIC AND SOCIAL COUNCIL AT ITS SUBSTANTIVE SESSION OF 1993

6. At its forty-ninth session held from 1 February to 12 March 1993 the Commission on Human Rights considered the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" at its 4th to 11th and at its 29th and 42nd meetings. The debates are reported in the relevant summary records (E/CN.4/1993/SR.4-11, 29 and 42). The Commission adopted four resolutions, which related to the situation in occupied Palestine (resolution 1993/4), the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (resolution 1993/5), the situation of human rights in Cambodia (resolution 1993/6) and the question of Western Sahara (resolution 1993/17).

7. At its substantive session of 1993, the Economic and Social Council, by its decision 1993/254 of 28 July 1993, after having taken note of Commission on Human Rights resolution 1993/6 on the situation of human rights in Cambodia, approved the Commission's requests to the Secretary-General contained in that resolution.

II. REPLIES RECEIVED FROM GOVERNMENTS

CUBA

[Original: Spanish]

[12 July 1993]

1. The Charter of the United Nations enshrines, in the hierarchy of the legal principles governing international relations, the principle of the self-determination of peoples.

2. The right of peoples to self-determination is the principle that forms the basis and constitutes the nucleus from which the other principles emanate. Moreover, it is inalienable, non-transferable, permanent, imprescriptible and inseparable from the very existence of the State and its rights and duties, and entails the right of all peoples to defend their sovereignty and territorial integrity.

3. By proclaiming in resolution 1514 (XV) of 14 December 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the General Assembly gave concrete expression to this principle. Under the Declaration,

"All peoples freely determine their political status and freely pursue their economic, social and cultural development", in other words, everything related to the legal institutional framework of peoples is the exclusive domain of each people.

4. In spite of its legal validity and in view of the unipolar conditions in the contemporary world, Cuba considers that there are serious threats to the principle of self-determination, which is essentially the antithesis of interventionism.

5. Any intervention in the internal affairs of States is contrary to the purposes and principles of the Charter in general and the right of peoples to self-determination in particular; and no exception to the universal principle of non-intervention is acceptable.

6. Those who advocate the concepts of "limited sovereignty" and the "duty to interfere for humanitarian reasons", which are designed to impose a new type of international relations, try to ignore the validity of the principles of self-determination and unrestricted respect for State sovereignty since these principles inevitably affect questions relating to the political life and political institutional framework of countries.

7. Furthermore, the conditions prevailing today in various bodies of the United Nations system, in particular, the Security Council, are facilitating interventionist actions, including the unilateral use of armed force without even having the prior and express authorization of the Council for it.

8. It is a matter of general knowledge that very serious attempts are being made to present a specific political system as one that must and should be applied throughout the world. Efforts are also being made to establish United Nations bodies to supervise elections.

9. The key problem for those attempting to impose this new world order on us is that such an order itself is in clear and open contradiction to the principles governing coexistence among nations. Accordingly, Cuba considers that the most important task to be undertaken by the United Nations is to defend at all costs the principles of the Charter and, in particular, the principle of the self-determination of peoples. Cuba, as it has demonstrated during the past 30 years, is prepared to defend those principles to the limit.

10. The foreign military bases imposed on other countries against their will constitutes a violation of sovereignty, self-determination and territorial integrity, a natural consequence of colonialism, which burdens peoples through the territorial price that must be paid for haggled-over independence and defrauded self-determination. An example of this pernicious situation, to cite only the one which Cuba is enduring, is the illegal occupation of part of our territory through the United States naval base in Guantanamo, which is contrary to the will of our people and is based on treaties that were imposed.

11. Cuba rejects all manifestations and remnants of colonialism, political and economic dependence and all political, economic and military aggression or threats of such aggression and at the same time reaffirms and reiterates its well-known position, inspired by Bolívar and Martí, of defending the principle

of the self-determination of peoples and their independence, sovereignty and dignity and is entitled to do so by virtue of the very history of the struggle of its people, who have directly experienced colonialism and aggression.

12. The application of unilateral economic sanctions is another of the actions which restrict or nullify in practice the exercise of that right. Cuba has, for more than 30 years, been the object of a criminal trade, economic and financial blockade imposed by the Government of the United States with the clear objective of forcing us to give up the political orientation and approach to economic development which the Cuban people has freely chosen through the exercise of its right to self-determination.

13. Last year, the United States Congress adopted and the then President subsequently enacted the so-called "Torricelli Law", which further tightens the blockade and whose provisions interfere in the internal affairs not only of Cuba, but also of countries that trade or have financial dealings with Cuba, by establishing severe sanctions against States, companies or individuals that do so.

14. Cuba reiterates that the objectives to be pursued by our Organization should include the goal of eliminating, before the end of the century, colonialism, which still oppresses a number of peoples and territories.

15. In this connection, Cuba upholds the right of Puerto Rico, which, to this day, has been denied the right to independence, to join the free peoples of the world as an inalienable part of the Americas.

16. With regard to the situation in South Africa, Cuba, as it has stated in the past, believes that it is essential to step up the efforts of the international community aimed at the total and definitive elimination of apartheid in order to establish a democratic, united and non-racial society, which would be achieved initially through the elections to the Constituent Assembly scheduled for April 1994 and then the establishment of a transitional executive council.

17. In the Middle East, the Palestinian people has for more than 40 years been denied the right to live in its own State. Cuba reiterates that there will be no lasting peace until Israel withdraws from all the Arab territories occupied since 1967 and until the inalienable rights of the Palestinian people, particularly the right to establish its own State, are restored.

18. In the same way, Cuba reaffirms the position that the right of the Saharan people to decide, through a free referendum, to establish their own State should be recognized.

19. It is urgently necessary to combat certain views claiming that we are now in a "post-colonial" world, in an attempt to conceal or ignore the continued existence of forms of dependence, pillaging and exploitation. The latter require speedy action by the international community, bearing in mind the fact that the fundamental human right to political and economic self-determination is a prerequisite for development, to the extent that it is obvious and indisputable that there is no development without self-determination.

ECUADOR

[Original: Spanish]

[12 July 1993]

1. The Ecuadorian Constitution incorporates the principle of the self-determination of peoples. It states that "the Ecuadorian State condemns all forms of colonialism, neo-colonialism and discrimination or racial segregation. It recognizes the right of peoples to be free of such oppressive systems".

2. With regard to human rights, Ecuador has implemented all the norms contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and has supported every resolution and activity of the United Nations and the Organization of American States in defence of human rights.

3. At the United Nations, Ecuador, in consonance with the principle of self-determination, voted in favour of the resolution on the importance of the realization of the right of peoples to self-determination and the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.

4. Ecuadorian domestic legislation contains norms to ensure the proper protection of human rights and the Government has promoted and pursued a policy of social welfare with a view to encouraging development in an effort to eradicate illiteracy, promote community health and eliminate vestiges of racial preconceptions and discrimination among the various groups making up the Ecuadorian people.

5. The Government is aware of the problems affecting the various population groups which have participated in the economic development of Ecuador yet have been excluded from many of the benefits of development as a result of historical or other factors.

6. Ecuador recognizes that the ethnic minorities and indigenous groups making up the people of Ecuador have a right to their own culture and land. The indigenous population of Ecuador, both demographically and historically speaking, has played a major role in building the Ecuadorian nationality. The various ethnic groups constitute cultural systems with their own languages and customs. This has given Ecuadorian society a multicultural character.

7. The indigenous population is generally well organized and has representative bodies which seek to improve living conditions for indigenous groups within the national context.

8. The Ecuadorian Government has sought to strike a balance between the interests of the various indigenous communities and between those communities and settlers as well as between each sector, aware as it is that Ecuadorian society is a unitary, multicultural and multiracial whole. Recognition of such pluralism in no way affects the historical and legal unity of the State.

9. In Costa Rica, on 22 January 1993, Ecuador signed the Declaration of the Regional Meeting for Latin America and the Caribbean, as part of the preparations for the World Conference on Human Rights, held at Vienna in June 1993. At the Regional Meeting it was reaffirmed, inter alia, that "our countries represent a broad grouping of nations sharing common roots within a rich cultural heritage based on a combination of various peoples, religions and races, and that our roots unite us in the search for collective solutions to present problems through friendly dialogue, peaceful coexistence and respect for pluralism and the principles of national sovereignty, non-interference in the internal affairs of States and self-determination of peoples".

10. The signatories to the Declaration further reaffirmed "the unwaivable commitment to the defence and promotion of representative democracy and human rights in the region, within respect for the principles of self-determination and non-intervention".

11. Further, Ecuador also endorses the affirmation in the Declaration signed in Costa Rica that: "We welcome the celebration in 1993 of the International Year of the World's Indigenous People; we recognize the enormous contribution of indigenous peoples to the development and plurality of our societies and we reaffirm our commitment to their economic, social and cultural well-being and our obligation to respect their own initiatives and participation, recognizing the value and diversity of their cultures and their forms of social organization, without detriment to the unity of the State".

12. With respect to the practice of using mercenaries against sovereign States and national liberation movements, which constitutes a criminal act, as reaffirmed by the General Assembly in paragraph 26 of its resolution 47/82, Ecuador considers that this constitutes a serious violation of the principles and norms of international law safeguarding the sovereignty, independence and territorial integrity of States.

13. Ecuadorian legislation does not view the case of the mercenary or hired killer as a special case. In such a case the Constitution, with other legislation, provides for the same treatment as that accorded any citizen who violates the law, just as any act deemed an offence under the Ecuadorian Penal Code is tried under domestic legislation. Any act defined as an offence is tried as such. There is no specifically defined category of mercenary or hired killer in the Penal Code, but the Penal Code does cover kidnapping, extortion and murder, whether committed by nationals or foreigners, and the former would be treated similarly.

14. Accordingly, Ecuador, in defence of its fundamental national interests, fully supports any procedure devised by the international community to prevent and punish such crimes.

JORDAN

[Original: English]

[21 July 1993]

The Government of the Hashemite Kingdom of Jordan informed the Secretary-General that the Jordanian Penal Law No. 16 of 1960 contains the following provisions pertaining to crimes which contravene international law:

Article 118, according to which an individual may be put under temporary arrest for a period of no less than 5 years if:

The individual contravenes the arrangements taken by the State to ensure its neutrality in time of war;

The individual concerned undertakes actions or writings or speeches not permitted by the Government, in such a manner that these actions or writings or speeches expose the Kingdom to the danger of hostile actions, or disturb the Kingdom's relations with a foreign State, or expose the Kingdom's citizens or their material belongings to acts of reprisal or vengeance.

Article 119, according to which:

Any individual who organized or prepared or assisted in the Kingdom's territory any attempt to change the standing regime of a friendly State by force, or change its Constitution by force is penalized by temporary arrest.

Article 120, according to which any individual who recruits in the Kingdom, without the Government's consent, soldiers in order to fight for the interests of a foreign State is penalized by temporary arrest.

The text of the above-mentioned provisions of the Jordanian Penal Law in the original Arabic, as they appeared in issue No. 1487 of the Jordanian official Journal, dated 1 May 1960, was enclosed.*

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* Available for consultation in the files of the Secretariat.

SPAIN

[Original: Spanish]

[3 August 1993]

1. Spain recognizes the right to self-determination and independence of all peoples still subject to colonial domination, alien subjugation and foreign occupation and faithfully complies with the relevant resolutions of the United Nations.

2. Spain supports the right of the Palestinian people to self-determination. It is Spain's view that the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War applies to the occupied territories and that Israel must comply with the Convention, as well as with Security Council resolution 799 (1992) of December 1992 demanding the immediate return of all those deported. Spain views the Palestine Liberation Organization as the legitimate representative of the Palestinian people.

3. Spain has supported and will continue to support the economic development of Namibia and the promotion of democracy in that country.

4. Spain has rejected and continues to reject apartheid, faithfully complies with United Nations resolutions aimed at the eradication of apartheid and applies all Community measures aimed at attaining a united, democratic and non-racial South Africa through peaceful means and negotiation.

5. Spain supports the peace process in Mozambique, having provided 20 military observers to the ONUMOZ contingent and committed 350 million pesetas in aid in connection with the return and re-insertion of the refugee and displaced population and assistance in the electoral process.

6. Spain fully supports the efforts of the Secretary-General to implement the plan to settle the question of Western Sahara.

7. Spain vigorously condemns human rights violations of peoples still subject to colonial domination and alien subjugation as well as other such violations.

YUGOSLAVIA

[Original: English]

[5 July 1993]

1. In 1978, Yugoslavia ratified Additional Protocol I to the Geneva Convention for the Protection of Victims of International Armed Conflicts of 12 August 1949 applicable to armed conflicts in which peoples are fighting colonial domination, foreign occupation and racist regimes using the right to self-determination. Article 47 of the above Protocol defines persons considered as mercenaries and provides that a mercenary cannot be accorded the treatment of a soldier or prisoner of war.

2. The criminal legislation of the Federal Republic of Yugoslavia does not provide for incrimination which would correspond to the requirement in paragraph 26 of General Assembly resolution 47/82.

3. However, Yugoslavia considers very positive and acceptable the call by the General Assembly for the use of mercenaries, their recruitment and training and serving as mercenaries to be punishable offences in the national legislations of States Members of the United Nations, all the more since the principles of Yugoslavia's foreign policy have always been based on the right of peoples to self-determination and the condemnation of colonial and racist regimes.

4. Mercenaries have participated and are still participating in the armed conflicts in former Yugoslavia, so that Yugoslavia, as a country, has had negative experience with such persons and, therefore, supports any initiative and calls for their punishment.

5. In this connection, the Federal Government will propose to the Federal Assembly to envisage the punishment of mercenaries in the pending radical reform of the criminal legislation, i.e. amendments to the Criminal Code of the Federal Republic of Yugoslavia, in compliance with paragraph 26 of General Assembly resolution 47/82.

6. Attached to the reply was an annex* containing information regarding foreigners in military and paramilitary forces in parts of the territory of the former Yugoslavia.

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* Available for consultation in the files of the Secretariat.